

# ***POLICIES, PROCEDURES, AND RULES***

<b>Subject:</b> 1.2.1 Limits of Authority	<b>Effective Date:</b> March 17, 2015
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## **I. Purpose**

The purpose of this policy is to outline the limits of law enforcement authority delegated to officers of the Fayetteville Police Department pertaining to the enforcement of laws, statutes and ordinances within their jurisdiction.

It also defines circumstances and establishes limits involving officer discretion and provides guidelines for exercising such discretion utilizing alternatives to arrest and/or pre-arraignment confinement.

## **II. Definitions**

**Arrest:** Arrest is the taking of a person into custody, the purpose of which is to restrain the accused until he can be held accountable for the offense at court proceedings.

**Probable Cause:** Probable cause has been interpreted as facts and circumstances that amount to more than mere suspicion but less than proof beyond a reasonable doubt that would lead a prudent person to believe a crime has been committed or is about to be committed.

**Felony:** A felony is a serious offense, which carries a penalty of incarceration usually for one year or more. Persons convicted of felony offenses lose certain rights such as the right to vote, hold an elective office of federal government position or maintain certain licenses.

**Misdemeanor:** A misdemeanor is a less serious offense punishable by incarceration for not more than one year in a county jail or fine or similar penalty.

**Off-Duty:** For the purposes of this section, officers are considered to be “off-duty” when not working in furtherance of departmental objectives during regularly scheduled hours or other hours as required by a police supervisor or court order.

## **III. Policy**

### **A. JURISDICTION AND STATUTORY AUTHORITY**

1. Officers of the Fayetteville Police Department shall have within the corporate limits of the City of Fayetteville all the powers invested in law enforcement officers as described under Arkansas Code Annotated 14-52-203 [CALEA 1.2.1, 1.2.2], [CALEA 11.3.1 a.].
2. Officers shall also have the power to serve all civil and criminal process that may be directed to them by any officer of the court and enforce the ordinances and regulations of the city as the city council may direct.
3. In addition to their authority within the corporate limits, officers shall have all the powers invested in law enforcement officers by the Arkansas Constitution, State statutes and the Rules of Criminal Procedure.
4. An officer outside his or her jurisdiction may affect an arrest without a warrant upon having both probable cause and the request or permission of the agency having jurisdiction. Upon doing so, the officer must notify the law enforcement agency having jurisdiction as soon as practicable and relinquish custody of the suspect to that agency as described under Arkansas Code Annotated 16-81-106.
5. An officer pursuing an offender outside the corporate limits or extraterritorial jurisdiction of the city shall be entitled to all privileges, immunities and benefits to which he would be entitled if acting within the city, including coverage under the worker's compensation laws.
6. Each employee of the department is accountable for the use of delegated authority invested by statute [CALEA 11.3.1 b.].

## B. ARREST AUTHORITY

An officer may affect an arrest if there is probable cause to believe a person has committed an offense as it is defined in the Arkansas Criminal Code. Probable cause is the legal requirement for an arrest [CALEA 1.2.5].

1. An arrest occurs when the following conditions exist:
  - a. The officer believes that sufficient legal evidence exists that a crime is being committed, and intends to restrain the suspect;
  - b. The officer deprives the individual of his liberty; and
  - c. The suspect believes he or she is in custody of the police and cannot voluntarily leave.
2. An arrest can be initiated with or without a warrant and must be based on probable cause.
  - a. Arrest Pursuant to Warrant – An arrest warrant issued by the court determines an arrest should be made and directs the police to bring the named person before court.
    - (1) An officer having a warrant in possession may arrest the person named on or described in the warrant at any time and at any place within the jurisdiction of the City of Fayetteville.
    - (2) An officer, who has knowledge that a warrant for arrest has been issued and has not been executed, but who does not have the warrant in his possession, may arrest the person named in the warrant according to Arkansas State Law.
    - (3) The officer must inform the person arrested of the existing warrant, and
    - (4) The officer must serve the warrant on the person as soon as possible.

- b. Arrest Without a Warrant – According to Rule 4 of the Arkansas Court Rules of Criminal Proceedings, a law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed [CALEA 1.2.5]:
  - (1) a felony;
  - (2) domestic violence; as further detailed in FPD 1.2.4, Domestic Violence
  - (3) a traffic offense involving:
    - a. death or physical injury to a person; or
    - b. damage to property; or
    - c. driving a vehicle while under the influence of intoxicants or narcotics;
  - (4) Any violation of law in the officer's presence.
  - (5) A private person may make an arrest where he has reasonable grounds for believing the person arrested has committed a felony.
  - (6) It is not necessary that an officer or citizen be able to articulate the specific offense at the time of the arrest.
  - (7) A warrant-less arrest by an officer not personally possessed of information sufficient to constitute reasonable cause is valid where the arresting officer is instructed to make the arrest by a police agency, which collectively possesses knowledge sufficient to constitute reasonable cause.
  - (8) In the case of a misdemeanor, probable cause as well as the officer's presence at the time of the offense is required, with the following exceptions:
    - a. The officer believes the suspect may cause physical injury to self or others, or damage to property unless immediately arrested (see ACA 16-81-113) and Domestic Abuse Act as defined by Arkansas State Law.
    - b. The suspect has committed the offense of shoplifting when the officer, merchant or merchant's employee who has observed the person accused of shoplifting shall provide a written statement which shall serve as probable cause to justify the arrest (See ACA 5-36-116).
    - c. The officer has reason to believe the suspect will not be apprehended unless immediately arrested.
- 3. Upon making an arrest, an officer must:
  - a. Identify himself as a law enforcement officer unless his identity is otherwise apparent;
  - b. Inform the arrested person that he is under arrest; and
  - c. As promptly as is reasonable under the circumstances, inform the arrested person of the cause of the arrest, unless the cause appears to be evident.
- 4. An arrest is complete when:
  - a. The person submits to the control of the arresting officer who has indicated his intention to arrest, or
  - b. The arresting officer, with intent to make an arrest, takes a person into custody by the use of physical force.
- 5. An officer may enter private premises or vehicles to effect an arrest when:
  - a. The officer has in his possession a warrant or order for arrest of a person or is authorized to arrest a person without a warrant or order having been issued;

- b. The officer has reasonable cause to believe the person to be arrested is present, and
  - c. The officer has given, or made reasonable effort to give notice of his authority and purpose to an occupant thereof, unless there is reasonable cause to believe the giving of such notice would present a clear danger.
- 6. Arrest for Serious Crime – When an officer arrests a person for a serious crime, the officer shall advise the supervisor on duty and a determination will be made if the Criminal Investigation Division shall be notified of the arrest for further interviewing and investigation.
- 7. Arrest of Military Deserter – Officers with probable cause that a person is a military deserter may arrest that person and arrange as soon as possible to release the person to the proper military authority.
- 8. Arrest of Injured Person – Upon arresting a person who has been injured, or is injured during the arrest process, the officer shall conduct an assessment of the injury based on visual and/or verbal clues of the person and/or injury. In doing so, the officer shall [CALEA 1.3.5]:
  - a. Transport the person for normal booking procedures if the injury is apparently non-debilitating and not life threatening.
  - b. Request for Emergency Medical Services to respond to the scene if the injury appears to be life threatening or debilitating.
  - c. Not transport the person to a medical facility if the injury is life threatening or debilitating unless exigent circumstances exist. Further reference may be made to FPD 71.1.1, Detainee Transportation.
- 9. Arrest of Unconscious or Semiconscious Person – Whenever an officer arrests an individual who is unconscious, semiconscious, or otherwise apparently suffering from some disabling condition, and who is unable to provide information on the causes of the condition, the officer should make a reasonable effort to determine if the person arrested is wearing a bracelet or necklace containing the Medic Alert Foundation's emergency alert symbol to indicate that the person suffers from diabetes, epilepsy, cardiac condition or any other form of illness which would cause a loss of consciousness. If such a symbol is found indicating that the person being arrested suffers from one of those conditions, the officer must make a reasonable effort to have appropriate medical care provided.
- 10. Arrest of Foreign Nationals – Whenever a foreign national is arrested or detained in the United States, there are legal requirements contained in the Vienna Convention on Consular Relations to ensure that the foreign national's government can offer him/her appropriate consular assistance. In all cases the foreign national must be told of the right of consular notification and access. According to the Department of State, this requirement applies even if the foreign national is not in the United States legally. A list of contact information for embassies and consulates within the United States is available in the squad room and the Washington County Detention Center.

In some cases, mandatory notification must be made to the nearest consulate or embassy without delay, or within the time specified in a bilateral agreement between the United States and the foreign national's country, regardless of whether the foreign national request such notification. If the foreign national's country is on the list of mandatory notification countries, notify that country's nearest consular official, without delay, of the arrest/detention. A list of the mandatory notification

countries is available in the squad room and the Washington County Detention Center.

Privacy concerns or the possibility that a foreign national may have a legitimate fear of persecution or other mistreatment by his/her government may exist in some mandatory notification cases. The notification process should still be honored, but it is possible to take precautions regarding disclosure of information. The State Department should be consulted in these situations. Under no circumstances should any information indicating that a foreign national may have applied for asylum in the United States or elsewhere be disclosed to that person's government.

It is the responsibility of the arresting officer, not the detaining facility, to notify the arrested person's nearest consular official. It is also the arresting officer's responsibility to inform the arrestee notification has been made. A form documenting arrest notification that can be sent via FAX is available in the squadroom and the Washington County Detention Center. A copy of this notification process should be attached to the arrest report [CALEA 1.1.4].

11. Misuse of Arrest Authority – Officers of the Fayetteville Police Department shall not misuse the arrest authority that has been delegated to them.

#### C. USE OF DISCRETION AND ALTERNATIVES TO ARREST

The Chief of Police shall determine what measures (policies and procedures) shall be enforced to influence officer discretion at the operative level of patrol.

Officers are encouraged to be sensitive to cues as the probability of clearance, witness identification, victim prosecution and other factors when making arrests, issuing citations or other law enforcement activities.

In the instances of lesser violations, the officer may weigh the seriousness of the offense and the surrounding circumstances and choose an alternative to arrest. The proper exercise of discretion does not relieve the officer of his responsibility to conduct a thorough investigation [CALEA 1.2.7].

1. Alternatives to Arrest [CALEA 1.2.6]
  - a. Issuance of a citation or criminal summons (when the district judge determines the offense to be citable) which would allow the arrested person to appear in court on his/her own recognizance.
  - b. Informal resolution; or
  - c. Warnings.
2. At his discretion, an officer may assist, as an alternative to arrest and incarceration, an individual found intoxicated in a public place by taking the following actions [CALEA 1.2.7]:
  - a. The officer may transport the intoxicated individual home;
  - b. The officer may transport the intoxicated individual to the residence of another individual willing to accept him/her;

- c. The officer may transport the intoxicated individual to a public or private shelter facility if the individual is apparently in need of and unable to provide for himself food, clothing or shelter but not in need of medical care;
  - d. The officer may transport the intoxicated individual to a medical facility if it is apparent the individual is in need of but unable to provide for himself immediate medical care.
- 3. Criminal justice and social services programs are available resources that should be considered and utilized when possible. Officers should carefully weigh the available options in any given situation; supervisory consultation may be necessary. Diversion programs available may include, but are not limited to [CALEA 1.1.3]:
  - a. Juvenile offender diversions via the Juvenile Division of the Fourth Judicial Circuit Court
  - b. Fourth Judicial District Victim's Rights Advocate
  - c. The Fayetteville Women's Shelter
  - d. Northwest Arkansas Rape Crisis Center
  - e. Salvation Army
  - f. Local churches and homeless shelters
  - g. Local mental health facilities (See FPD 41.2.7)

#### D. OFF-DUTY ARREST

Officers of the Fayetteville Police Department have liability protection for on-duty and off-duty performance of official duties. This protection does not extend to willful acts to cause injury, to damage or to those actions that the police officer knew, or reasonably should have known, were in conflict with the established policies of this department.

- 1. When off-duty and within legal jurisdiction of this department, a police officer may make an arrest when:
  - a. There is an immediate need for the prevention of bodily injury or property loss/damage or apprehension of a suspect;
  - b. The arresting officer is in possession of appropriate police identification.
- 2. Off-duty officers shall not enforce minor traffic offenses or utilize personal vehicles to pursue or attempt the apprehension of persons.
  - a. Off-duty officers may cautiously follow suspects to obtain vehicle and suspect descriptions or destinations, but officers must realize there is no authorization under state law or departmental policy to violate traffic laws while operating a private vehicle.
  - b. If an off-duty arrest is made, the off-duty officer shall abide by all departmental policies and procedures and shall notify an on-duty supervisor of the circumstances of the arrest and complete any documentation required by procedure.
  - c. No prisoner or arrestee, under any circumstances, shall be transported in a privately owned vehicle.

#### E. POST ARREST PROTOCOL

The Chief of Police, state law requirements, and jail procedures will dictate what protocol will be followed post-arrest pertaining to preparing reports, fingerprinting, and photographing.

1. For probable cause arrests made by officers that do not include warrants issued by a judge, officers will complete a preliminary report as part of the booking process as well as an arrest incident report in the police department's reporting system. If the arrest also includes a criminal offense involving a victim, the officer will complete that part of the report as well as the suspect's arrest report [CALEA 1.2.5 a.].
2. Fayetteville Police Department is responsible for the fingerprinting and photographing of arrested subjects per state law requirements. Per Arkansas 12-12-1006, immediately following an arrest for an offense, a law enforcement official at the receiving criminal detention facility shall take, or cause to be taken, the fingerprints and a photograph of the arrested person if the offense is a felony or a Class A misdemeanor. When the first appearance of a defendant in court is caused by a citation or summons for an offense, a law enforcement official at the receiving facility shall take, or cause to be taken, the fingerprints and a photograph of the arrested person when the offense is a felony or a Class A misdemeanor. While this policy does allow officers to utilize discretion as to whether or not a physical arrest is made or a citation is issued for a Class A misdemeanor, the District Court Judge may provide a list of offenses that will require a physical arrest for certain offenses.
3. Juvenile post arrest requirements are set forth in A.C.A. 9-27-320. For juvenile arrest procedures and protocols, see Juvenile Operations 44.1.1.

#### F. PERSONNEL IDENTIFICATION MEASURES

The following will govern identification requirements of all police department personnel [CALEA 22.2.7]:

1. All personnel will be issued an identification card with their photograph that is required to be carried and accessible while the employee is on duty [CALEA 22.2.7 b.].
2. All employees shall be able to display their identification card upon a reasonable and safe request. Sworn personnel should display this in the accompaniment of their issued badge. Exceptions to this display are when necessary during the performance of police duties at an incident where the officer's status is obvious or in a required undercover capacity where doing so would jeopardize the mission of the operation or the officer's cover [CALEA 22.2.7 a.].
3. In cases where an officer is unable to show identification during an incident, that officer should make every attempt to show his credentials to the requesting party once the scene is secured [CALEA 22.2.7 a.].
4. All officers including uniformed officers should have access to their full credentials while on duty for cases where additional credential checks may be required. Exceptions to this requirement may occur in undercover assignments [CALEA 22.2.7 a.].
5. In the course of conducting official department business over the telephone, all employees should identify themselves by title, department, and name. Should the other party question the department employee's credibility, the employee should welcome the other party to verify their identity. The employee should suggest the other party may hang up and call the Fayetteville Police Department for verification through Dispatch. Employees may provide the other party with the telephone

number and tell the other party they are welcome to look up the phone number independently [CALEA 22.2.7 c.].

6. The issuance of identification shall be considered a standard procedure. A record will be maintained documenting the date of issuance, the person issuing, and the person issued. Employees will be expected to maintain their identification in a professional manner. Lost or stolen identification cards shall be reported to the immediate supervisor.
7. Upon separation of employment, the employee shall relinquish his or her identification card to police personnel.